

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6056 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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PATEL D VITHALDAS

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 6056 of 1985  
MR BJ JADEJA for Petitioners  
RULE SERVED for Respondent No. 1
2. Special Civil Application No 3869 of 1988  
MR JG NAIK for Petitioners  
PARTY-IN-PERSON for Respondent No. 1

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CORAM; MR.JUSTICE KUNDAN SINGH

Date of decision : 9.7.1998

ORAL JUDGMENT

By means of this petition, the petitioners have sought for quashing the judgment and order dated 13.3.84 of the Assistant Collector, Dhrangadhra at Annexure "C", the order dated 30.7.84 of the Collector, Surendranagar at Annexure "D" and the

judgment and order dated 11.7.85 passed by the Secretary, Revenue Department (Appeals), Government of Gujarat, Gandhinagar at Annexure "D". Rajendrasinhji Shivsindhji was "A" class Girasdar under Saurashtra Land Reforms Act and he was entitled to retain 120 acres of land for personal cultivation. He was allotted 119.24 acres of land for personal cultivation. But thereafter, an order had been passed to grant occupancy rights to Ramji Bhaiyaji of 11 acres and 26 gunthas of land out of the suit land, thus deducting 11 acres and 28 gunthas from Gharkhed land, 107 acres and 38 gunthas remains. Rajendrasinhji Shivsindhji being a legal representative of the said Girasdar moved an application for getting 12 acres of land from Padtar land to make it Gharkhed as per economic holding and proposal was made to the Government dated 25.7.68 to allot 8 acres and 4 gunthas of land from survey no.264 and 3 acres and 36 gunthas from survey no. 301 of village Hampar. That proposal was accepted by the Government. The Collector, Surendranagar by an order dated 1.11.69 allotted 8 acres and 4 gunthas of land bearing survey no. 264 and 3 acres and 36 gunthas of survey no.301 to Rajendrasinhji Shivsindhji, legal heir and representative of Girasdar as new impartible tenure subject to the following terms:

1. Possession of this 12 acres of land was handed over on receiving 12 times the occupancy price.
2. This land is to be held on new and impartible tenure. This land shall not be transferred by mortgage, gift or sale.
3. The Girasdar shall have to cultivate this land personally.
4. Assessment and other taxes in respect of this land shall be paid regularly.
5. The provisions of Land Revenue Code and Rules shall apply to this land and whatever amendments are made in future shall also be applicable.

2. The entry no.533 regarding 8 acres and 4 gunthas part of survey no.301 was certified on 26.7.70. Regarding entry no. 757 in respect of survey no.264, notices were issued. Some proceedings were initiated as case no. 30/82-83 for the breach of conditions laid down by the Collector, Surendranagar by the order dated 1.11.69. It was alleged that Rajendrasinh, Kanaksinh and Ramsing of village Hampar transferred 3 acres and 31 gunthas of land forming part of survey no. 301 to one Bhaiyalal Vitthaldas by a registered sale deed dated 28.5.81 and entry no. 770 was made in the record on 26.10.81 and that entry was not certified. The land

bearing no.264 for which entry no. 757 was made on 12.5.81 has also been transferred to by a registered sale deed dated 12.2.81 and that entry was certified by the Mamlatdar concerned. Those proceedings were contested in the Court of the Assistant Collector. The Assistant Collector passed an order dated 30.3.84 forfeiting the land of survey no. 301 admeasuring 3 acres and 5 gunthas to the State under Section 79-A of the Bombay Land Revenue Code. Being aggrieved by the order, the petitioner filed Land appeal No. 58 of 1983-84 before the Collector, Surendranagar. The appeal was also dismissed and the order of the Assistant Collector was confirmed by an order dated 30.7.84 by the Collector, Surendranagar. Being aggrieved by the said order, they preferred Revision Application No. S/RD/LND/R/638/84 in the office of the Secretary, Revenue Department (Appeals), Ahmedabad. The Secretary also dismissed the Revision Application of the petitioners and confirmed the order of the lower authorities by an order dated 11.7.85.

3. Being aggrieved by the orders of the authorities below, the petitioners have filed the present petition before this Court for quashing the judgment and order passed by the lower courts.

4. The learned advocate for the petitioners raised the following questions.

- (1) The conditions imposed by the Collector, Surendranagar in the order dated 1.11.69 were illegal and against the provisions of Saurashtra Land Reforms Act, 1951 as he was entitled to retain 120 acres of land for personal use. Those conditions being violative to the statutory provisions are not binding on the petitioners.
- (2) The Assistant Collector has taken action under section 79-A of the Bombay Land Revenue Code after a period of more than 12 years as the land in dispute was mortgaged in the year 1971 and the proceedings have been initiated in the year 1983.
- (3) The Supreme Court has laid down the principles in this regard in the case of Raghav Natha vs. State reported in 10 GLR page 992 that the Government may take action within a reasonable time otherwise the action cannot be taken against the person concerned and the reasonable time specified in that case is about 12 months. In the present case, the legal action is said to have been taken after a period of 12 years. Hence, the proceedings initiated under section

79-A against the petitioner after such a long time.

5. Regarding the first question, the Assistant Collector has observed in his order that if the opponent no.1 had any objection against conditions, he would have raised objection at that very point of time and would have got that condition cancelled, but he has not started such proceedings till today. The Collector considered the question raised before him and observed as under:

"The respondent no. 2 has been granted land in this way and it is undisputed that it has been granted on new and impartible tenure in pursuance of the above orders of the Government. The respondent no.2 should have raised objection at the time of the grant that the land should be allotted on old and permanent tenure, or if the order was illegal the respondent no. 2 should have challenged it at that time by preferring appeal. However, as no such appeal was filed by the respondent no.2, the land granted to him continues to be new and impartible tenure land".

6. On going through the papers of the lower courts, it appears that the respondent no.2 is allotted deficit land as a specific case under the orders of the Collector by his order dated 1.11.69 as per Memorandum of Government in Revenue Department bearing no. SVR-5269-10782-76 dated 5.9.68. The respondent no.2 has been granted land in this way and it is undisputed that it has been granted on new and impartible tenure in pursuance of the above order of the Government. The respondent no.2 should have raised objection at the time of grant of that land as old and permanent tenure and if the order was illegal, the respondent no.2 should have challenged it at the time of preferring an appeal. As such no appeal was filed by the respondent no. 2, the land granted to him continues to be new and impartible land. In the same manner, the Secretary has held that the argument of the petitioner that the Government has no right to impose condition of new tenure or against transfer was not sustainable because if the applicant had any objection against this condition, he should have represented to the Collector for cancelling his order dated 1.11.69. However, he has not done so. Now the question remains for determination if any condition is illegal, against statutory provisions of law or void ab initio can be ignored. This question has not been considered by any of the authorities below.

7. So far as the second aspect is concerned, the authorities have not considered at all whether the Government is entitled to take any action at any time or within a reasonable time where no time is prescribed. In the present case, the proceedings had been initiated after a period of 12 years. While the Supreme Court has held that the proceedings should be initiated by the authorities concerned within a reasonable time and in that particular case, 12 months was considered to be the reasonable time. None of the authorities below has considered this aspect.

8. The learned Assistant Government Pleader Mr. Bhalja contended that the petitioner has accepted the conditions imposed by the Authority below and he had not raised any objection or filed any representation or appeal till today saying that the conditions imposed upon them were illegal and violative of statutory provisions of law. As such this Court should not interfere with the findings recorded by the authorities concerned. The contention of the learned AGP is not tenable in view of the fact that the authorities below have ignored to consider the legal aspects, hence the view taken by them is not sustainable.

9. As discussed above, it appears that the authorities have not considered the conditions imposed on the petitioner being contrary to the statutory provisions of law could be binding them or not and the State had not resorted to legal process within a reasonable time. The learned counsel for the parties agreed that in case the matter is remanded to the Assistant Collector, he will decide it afresh keeping in mind the facts and circumstances of the case and the legal aspects raised before this Court. In the circumstances, I think it just and proper to remand the matter to the Assistant Collector to consider the material produced before him by the parties and arrive at a conclusion whether the conditions imposed on the petitioners are illegal and against statutory provisions of law and whether the Government is barred to take action under section 79-A of the Bombay Land Revenue Code after a period of 12 years.

10. In view of the above discussion, the petition is allowed and the orders at Annexures "C", "D" and "E" are hereby quashed and set aside. The matter is remanded to the Assistant Collector, Dhargandhra. He is directed to decide the matter afresh on the basis of the material that may be produced before him by the parties and after affording a reasonable opportunity of hearing

to both the parties within a period of six months from the date of the presentation of a certified copy of the judgment. Rule is made absolute accordingly to the aforesaid extent with no order as to costs.

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